

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ERIC TRAVERS, MICHAEL BOUDREAU,
JOSEPH COLELLA, CLIFFORD ARPINO,
MICHAEL MARINI, and ROCCO MARINI,
Plaintiffs

v.

CITY OF NEWTON, MASSACHUSETTS,
and DAVID B. COHEN, In his capacity as
Mayor of the City of Newton, Massachusetts
Defendants

MAGISTRATE JUDGE

04 - 12635 RWZ

Civil Action No.

RECEIPT # 60892
AMOUNT \$ 0
SUMMONS ISSUED 1
LOCAL RULE 4.1 1
WAIVER FORM 1
MCF ISSUED 1
BY DPTY. CLK. RDW

COMPLAINT, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF
REQUESTED, AND JURY DEMAND

I. INTRODUCTION.

1. This is an action for injunctive and compensatory relief challenging the defendants' unconstitutional system for determining which individuals are hired for entry-level fire fighter positions on the Newton Fire Department. During the last two years, the City has hired approximately 32 fire fighters. The plaintiffs would have been reached for selection but for the fact that the defendants utilized a quota system based on race to determine entry-level hiring. Such a system is not constitutionally permissible. The plaintiffs therefore seek injunctive relief ordering their hiring (after passing all mandatory qualification tests), and appropriate compensatory relief.

II. JURISDICTION.

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1331 and 1343 in that this claim arises under the Equal Protection clause of the Fourteenth Amendment to the United States Constitution.¹

III. PARTIES.

3. The plaintiffs were, at all times relevant hereto, adult residents of the City of Newton, Massachusetts. Each has had a lifelong goal of being a Newton fire fighter and each has the requisite skills and experience to perform the duties of fire fighter in the City of Newton. All of the plaintiffs are Caucasian.

4. The defendant City of Newton is a duly incorporated municipality of the Commonwealth of Massachusetts, and it maintains a fire department.

5. The defendant David B. Cohen is the Mayor of the City of Newton and in that capacity is responsible for the overall operation and administration of the City of Newton.

IV. STATEMENT OF FACTS RELATING TO THE NON-SELECTION OF PLAINTIFFS.

6. In or about 2001, the plaintiffs all took the Massachusetts Civil Service examination for the position of fire fighter in the City of Newton Fire Department. The plaintiffs all received scores of between 89 and 95, out of a total of 100. As a result of their civil service scores, the plaintiffs were ranked on the civil service list in order of their civil service examination score.

¹ There is also federal jurisdiction pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), however that claim is yet to be perfected. Plaintiff will move to amend this complaint to add that claim and his Chapter 151B, § 4 claim, as soon as a proper exhaustion has taken place.

7. Beginning in 2002, and continuing until the fall of 2004, the City of Newton hired approximately 32 new fire fighters from the civil service list described above. None of the plaintiffs were reached for hire.

8. During the several rounds of hiring that took place between 2002 and the fall of 2004, the defendants utilized a system of hiring in which one minority (a black or Hispanic) was automatically grouped with every three Caucasians reached for selection, regardless of that individual's civil service score or ranking. As a result, eight minority candidates were selected for hire, whose examination scores were below the plaintiffs.

9. Under the civil service statute, M.G.L. ch.31, the plaintiffs should have been reached for selection before the eight minorities hired for such positions.

10. On information and belief, the reason that the defendants hired one minority for every three Caucasians is that it still considers itself bound to do so by a federal court consent decree arising out of Castro v. Beecher, 371 F.Supp. 507 (1974) and NAACP v. Beecher, 504 F.2d 1017 (1st Cir. 1975).

11. Pursuant to such decree, the City of Newton was required to select fire fighter candidates for hire from a civil service list which ranked one minority with every three Caucasians, such that every fourth individual reached was a minority candidate. Such hiring was to continue until such time as the number of minority fire fighters in the Newton Fire Department approximated the number of minorities in the City of Newton.

12. On information and belief, by 2001, the City of Newton had long since achieved a complement of minority fire fighters in the Fire Department which was greater than the percentage of minorities residing in the City of Newton.

13. Accordingly, by 2001, no lawful reason existed for the City of Newton to continue to make hiring decisions utilizing a race-based one to three selection formula.

COUNT I

(42 U.S.C. §1983 – Fourteenth Amendment)

14. The action of the defendants as set forth above in making numerous hiring decisions based on a system which makes race a determinative factor in hiring, and which reserves a specific number of slots for minorities despite their test scores and qualifications, violates plaintiffs' rights to the equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution. This claim is asserted pursuant to 42 U.S.C. §1983.

JURY DEMAND

The plaintiffs request a trial by jury on all of their claims.

WHEREFORE, plaintiffs pray this Honorable Court to:

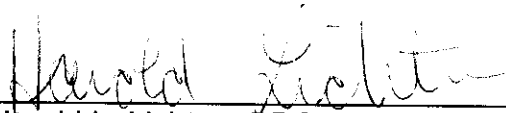
1. Issue a preliminary and permanent injunction forbidding defendants from utilizing an unlawful and unconstitutional selection process which makes race a determinative factor in hiring;
2. Order defendants to hire the plaintiffs forthwith with retroactive seniority and back pay; and

3. Award plaintiffs compensatory relief, back and front pay, and other appropriate damages, along with attorney's fees and costs.

Respectfully submitted,

ERIC TRAVERS, MICHAEL BOUDREAU,
JOSEPH COLELLA, CLIFFORD ARPINO,
MICHAEL MARINI, and ROCCO MARINI,
By their attorneys,

Dated: December 16, 2004



Harold L. Lichten, BBO #549689
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18 Tremont St., Ste. 500
Boston, MA 02108
(617) 367-7200

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Eric Travers, et al. v. City of Newton, Massachusetts, et al.

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- XX II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

N/A

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES

NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES

NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES

NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES

NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES

NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Harold L. Lichten

ADDRESS Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan, 18 Tremont St., Ste. 500, Boston

TELEPHONE NO. (617) 367-7200

MA 02108

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Eric Travers, Michael Boudreau, Joseph Colella, Clifford Arpino, Michael Marini, and Rocco Marini

(b) County of Residence of First Listed Plaintiff Middlesex
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

City of Newton, Massachusetts and David B. Cohen, in his capacity as Mayor of the City of Newton, Massachusetts

County of Residence of First Listed Middlesex

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Harold L. Lichten
Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan
18 Tremont St., Ste. 500
Boston, MA 02108 (617) 367-7200

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination <input type="checkbox"/> 901 Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions				

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Fourteenth Amendment to the United States Constitution

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 12/16/04 SIGNATURE OF ATTORNEY OF RECORD Cindy J. Niles
FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE